

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

WP(C).No. 34956 of 2007(J)

IA 949/02 IN CMA.147/2002 of ADDL.DISTRICT COURT 7 SESSIONS FAST
TRACK COURT II, PATHANAMTHITTA
OS.495/1992 of M.C.,PATHANAMTHITTA
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PETITIONER:

VASU, THADATHIL VADAKKETHIL HOUSE
ELAVUMTHITTA MURI, MEZHUVELI VILLAGE.

BY ADV. SRI.A.N.RAJAN BABU
SMT.K.SUNITHA VINOD
SRI.P.GOPALAKRISHNAN
SRI.V.N.SASIDHARAN

RESPONDENT:

THEVI, THADATHIL HOUSE,
ELAVUMTHITTA MURI, MEZHUVELI VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.34956 of 2007

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Dated this the 27th day of November, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Additional District Judge, Pathanamthitta. The said court allowed an appeal on payment of cost of Rs.500/- on or before 18.4.2007. Brief facts necessary for the disposal of the Writ Petition are stated as follows:

2. The writ petitioner is the defendant in the suit. The suit filed by the plaintiff was dismissed for default on account of non-appearance on 8.3.2000. The trial court was not satisfied with the evidence adduced and therefore dismissed the same. Against that order, a C.M.A. was filed with a petition to condone the delay of 91 days which also ended in the dismissal and the said impugned order was taken up before this Court and this Court remanded the case. After remand, the present impugned order is passed whereby the appeal is allowed on a cost of Rs.500/-.

3. Learned counsel for the petitioner would submit that the appellate court has not appreciated the evidence properly and the Doctor's certificate cannot be relied upon and therefore, it has committed a grave error in allowing the appeal. The principle to be followed in these types of cases are laid down by this Court in two decisions; **Sreedhara Kurup v. Mickel** - 1968 K.L.T. 599 and the other is a Division Bench decision of this Court in **Plantation Corporation of Kerala Ltd. v. Hussain** - 1998 (1) K.L.T. 1008. In the decision in **Sreedhara Kurup v. Mickel** - 1968 K.L.T. 599 this Court held as follows:

"It is largely a matter of wise discretion to be exercised by the court bearing in mind the wholesome principle that the right of a party to be heard should be negatived only if there is gross negligence or gross carelessness and that if some steps have been taken and application for restoration has been made with some diligence and some evidence adduced making out a sufficient cause for absence, restoration should be ordered, minor misconduct or laches being corrected by the common curative of costs. The brooding spirit of natural justice must be in the background while ascertaining whether there is sufficient cause."

The Division Bench held that when sufficient cause is shown the reopening of the case is a mandatory and when sufficient cause is not shown, it is discretionary.

4. The suit was listed for trial on 8.3.2000 and on the very same day, the plaintiff moved an application for adjournment, which was refused by the court and the suit was dismissed. Within the period of 30 days an application for restoration was filed alleging about the ailment. It was supported by a certificate issued by an Ayurveda Doctor. There are minor discrepancies here and there regarding the evidence. But what has to be gathered is whether there was gross negligence or grave misconduct. Here, the plaintiff wanted to contest the case properly. Therefore, she moved an application for adjournment and thereafter she filed an application for restoration in time. These are all indicative of the fact that she was not grossly negligent or her conduct amounted to gross misconduct. Further it is to be held that some evidence has been let in in the right direction and it is for the court to act upon and therefore following the principles laid down in both the above cases and for the laches as the court has already ordered cost, I find that the

judgment of the Appellate Court does not suffer from any infirmities, which requires interference at the hands of this Court.

Therefore, the Writ petition is dismissed.

M.N.Krishnan,
Judge.

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